IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 375 of 1988

in

SPECIAL CIVIL APPLICATIONNo 1197 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAJOD VIBHAG KELAVANI MANDAL

Versus

S K CHAUDHARI

Appearance:

1. LETTERS PATENT APPEAL No. 375 of 1988

MR MAHESH R SHAH for Appellant No.

MR MS RAO, AGP for Respondent No. 1

PARTY-IN-PERSON for Respondent No. 2

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 08/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The appellants challenge the judgement and order dated 26th August 1988 of the learned Single Judge in Special Civil Application No. 1197 of 1984 rejecting the petition holding that the challenge against the impugned order was totally devoid of any substance.

2. The appellant No.1, who is the original petitioner, challenged the order of the Director of Higher Education made on 6-2-1984 allowing the application of the respondent No.2 with a direction that he should be continued as assistant teacher in the higher secondary division of the appellant high school.

3. The Director of Higher Secondary Education came to a finding that permanent vacant post of assistant teacher in higher secondary division was required to be filled in from amongst the schedule caste or schedule tribe candidates, and that, no such candidate was available despite the efforts made by the management. It was further held that, in the second advertisement, the institution had clearly mentioned that the post in question was to be filled in from amongst the backward class persons, but if such candidate was not available, the posts will be filled in from the candidates belonging to the general category.

4. The learned Single Judge, after elaborately considering the material on record, found that the post was a permanent post and though it was reserved for schedule caste / schedule tribe candidates, it was in terms mentioned in the advertisement that this was a second attempt and if suitable candidate was not available from schedule caste / schedule tribe, the posts will be filled in from the general category. The learned Single Judge found that the respondent No.1 - authority was fully justified in making the order directing the continuance of the respondent No.2 as assistant teacher in higher secondary division of the school. It clearly emanates from the record that, in the second attempt for recruitment to the post in question, it was clearly specified that though it was meant to be filled in by schedule caste / schedule tribe candidates, since it was second attempt, if no such candidate was available, it

would have to be filled in from amongst general category candidates. Therefore, when no candidate from the reserved category was available and the respondent No.2 was selected and appointed, he could not have been appointed for a limited period on the ground that the post was reserved for schedule caste / schedule tribe candidates.

5. We, therefore, find ourselves in complete agreement with the reasoning of the learned Single Judge in rejecting the petition. The appeal is, therefore, dismissed with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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